



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION [CAO] NO.496 OF 2025

IN

ELECTION PETITION NO.21 OF 2025

Shri Girish s/o Krishnarao Pandav

..Versus..

Shri Mohan s/o Gopalrao Mate

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Mehmood Parcha, Shri A.B. Moon and Shri Jatin Bhatt, Advocates for
Petitioner.

Shri Sunil Manohar, Senior Advocate assisted by Shri Atharv Manohar and Shri
Uday Dable, Advocates for Respondent No.1.

.....

CORAM : PRAVIN S. PATIL, J.

RESERVED ON : 16.06.2025.

PRONOUNCED ON : 04.07.2025.

1. By this application, respondent no.1 seeks dismissal of the Election Petition under Section 86 (1) of the Representation of Peoples Act, 1951 (for short 'said Act') on the ground of non-compliance of Section 81 (1) of the said Act.

2. Before adverting to the merits of the application, it will be necessary to consider the admitted factual position of the present petition.

3. The petitioner, by way of present petition, seeks declaration to quash and set aside the election of respondent no.1 Shri Mohan s/o Gopalrao Mate elected from 53, Nagpur South Constituency of Maharashtra Legislative Assembly

General Election, 2024 which was held on 20.11.2024 and results declared on 23.11.2024 as null and void.

4. It is also admitted fact that petitioner on 04.01.2025 sworn an affidavit in support of his contention in the petition before Registrar (Judicial). Then on 06.01.2025 presented the petition before this Court.

5. Petitioner, along with petition, filed Pursis dated 06.01.2025, stating therein that petitioner on 04.01.2025 has sworn an affidavit personally and done all the formalities of signing the petition and attested xerox copies as per the instructions of Registrar (Judicial). However, while completing the formalities, to get the petition ready for filing, the working hours were over. On 05.01.2025 was Sunday. Petitioner hails from Ballarpur and on 06.01.2025 he was out of station. As such, petitioner has instructed the Advocate namely, Akash B. Moon to complete all the responsibilities of filing and presenting the petition. As such, the presence of petitioner for presenting the petition may kindly be dispensed with. He further stated that if any objection is called by this court, petitioner shall be solely responsible. As such, on the basis of this Pursis, Registrar (Judicial) accepted the presentation of the petition by putting endorsement as under :

*“Presented before me by
learned Advocate for the
petitioner.”*

Sd/-

Dt. 06.01.2025

Registrar (Judicial)

6. In response to the summons, respondent no.1 appeared in the matter and filed the application under Section

86 (1) of the Representation of Peoples Act, 1951 for dismissal of the Election Petition on the ground that petitioner was not personally present on 06.01.2025 to present the petition, hence same is in violation of mandate of Section 81 (1) of said Act. Hence, petition deserves to be dismissed.

7. Petitioner filed his reply to the application for dismissal of the Election Petition. As per the submission of petitioner, on 04.05.2025, the entire original set of Election Petition was prepared. On that day, petitioner was present before the Registrar (Judicial) for swearing an affidavit, who is empowered to check the objections before swearing an affidavit and filing of Election Petition. Accordingly, Registrar (Judicial) verified his identity and gone through the contents of the petition and documents filed along with the petition. Registrar (Judicial), being satisfied about the identity of the petitioner, completed the procedure of verification on the same day only. He further stated that up to 5.00 PM on 04.01.2025 the time of filing of Election Petition was over and, therefore, the petitioner left for his native place. On 05.01.2025 there was a Sunday and, therefore, the petition was not presented. He further stated that 06.01.2025, the petitioner was out of station for his social work. However, as all the formalities for filing of petition was completed on 04.01.2025, therefore, along with Pursis dated 06.01.2025, the petition was presented before this Court. As such, it is stated that as an affidavit was sworn on 04.01.2025, the petition is to be treated as presented in compliance of Section 81 (1) of the said Act and hence, there is no merit in the objection raised by the respondent no.1.

8. In the circumstances, the controversy involved in the matter is, whether affidavit sworn by petitioner on 04.01.2025 amounts to presentation of Election Petition or his personal presence was required while presenting the election petition on 06.01.2025 before Authorized Officer of this court.

9. I have heard both the parties at length on the application filed by Respondent No.1 for dismissal of petition. Sufficient opportunity was granted to the petitioner to put-forth his submission. Accordingly, petitioner again on 16.06.2025 filed an affidavit reiterating the same facts which he has stated in his reply to the application. Hence, after hearing both the parties and perusal of record, I proceed to decide the matter on merits as under.

10. In the light of objection raised by respondent no.1 for dismissal of Election Petition under Section 81 (1) of the Representation of Peoples Act, 1951, it would be relevant to consider Section 81 of the Representation of Peoples Act, 1951 which is reproduced for reference as under :

81. Presentation of petitions : (1) *An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.*

Explanation – In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) Sub-Section (2) omitted by Act 47 of 1966, Section 39 (w.e.f. 14.12.1966)

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

(2) It is herewith clarify that sub-clause (2) of Section 81 came to be omitted by Section 39 of the Representation of the People (Amendment) Act, 1966 with effect from 14.12.1966. The earlier clause (2) of the said Act was providing permission to present Election Petition by a person authorized in writing on behalf of the person filing the petition. The omitted provision of Section 81 (2) reads as under :

(2) An election petition shall be deemed to have been presented to the Election Commission -

(a) when it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf -

(i) by the person making the petition, or

(ii) by a person authorized in writing in this behalf by the person making the petition, or

(b) when it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed.

Hence, from perusal of this omitted provision, it is clear that before 14.12.1966 it was permitted to present the Election Petition before the Secretary of the Commission by the person making the petition or person authorized by the person making the petition or by registered post.

11. Now in view of Section 81 of the Representation of the People Act, 1951 mandates five requirements should be satisfied while presenting the petition before the court of law;

(i) *the qualification of the petitioner must be either “a candidate at such election” or an “elector”.*

(ii) ***the petition must be presented “by” the petitioner;***

(iii) *the petition must be based “on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101;*

(iv) *it must be presented in the High Court; and*

(v) *it must be presented within 45 days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.*

12. Section 86 of the said Act mandates that High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 and 117 of the said Act.

86. Trial of election petitions.— (1) *The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.*

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) *As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.*

(3) *Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.*

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

In view of above said legal position, it is clear that this Court can consider the objection under Section 81 of the Act for deciding the application at preliminary stage.

13. At the outset while replying the preliminary objection, it is stated by the petitioner that considering the issue whether an affidavit sworn by him amounts to presentation of the

petition or not can be dealt with at the time of deciding other issues involved in the matter and at this stage, the petition cannot be dismissed in limine on the preliminary objection raised by the respondent no.1. However, as the law laid down by the Hon'ble Supreme Court of India in the case of ***Azhar Hussain .vs. Rajiv Gandhi, reported in 1986 (Supp) SCC 315 and Samar Singh .vs. Kedar Nath alias K.N. Singh and others, reported in 1987 (Supp) SCC 663***, wherein the Hon'ble Supreme Court has observed as under :

“The powers of conferment on the court to reject the election petition summarily having a purpose of conferment of such powers to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. There is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law.”

14. It is further pertinent to note that as per settled position of law, an election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply, but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to

common law and equity must remain strangers to election law unless statutorily embodied. Furthermore, Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. It is also settled position of law that it would be in the interest of the parties to the petition and to the constituency as well as in the public interest to dispose of preliminary objections at an earliest because calling into question the election petition act as a psychological fetter on the elected candidate and since the court has the power to act at the threshold, the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law.

15. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court. Even in an ordinary civil litigation, the court readily exercises such powers to reject the plaint if it does not disclose any cause of action. Hence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection, the election petition is liable to be dismissed as ultimately it should be so dismissed only after recording evidence. Hence, considering the facts of the matter, I have no hesitation to decide the preliminary objection.

16. Now turning back to the merits of the application filed by respondent, it is the submission of respondent that Section 81 of said Act mandates election petition be presented personally by the election-petitioner. According to him, petition

presented by the Advocate in absence of petitioner is non-compliance of Section 81 (1) of the said Act. It is submitted that the provisions of Representation of the People Act, 1951 is a complete code and hence the manner in which it is prescribed is required to be adhered by petitioner.

17. In support of objection raised by respondent no.1 in the matter, he has relied upon the following case laws :

- (1) *G.V. Sreerama Reddy and another .vs. Returning Officer and others, reported in (2009) 8 SCC 736.*
- (2) *Narendra Lalchandji Mehta - applicant in the matter of Gilbert John Mendonca .vs. Narendra Lalchandji Mehta and others, reported in 2019 (1) Mh.L.J. 792.*
- (3) *Ramanlal Premy .vs. Shiv Pratap Singh and another, reported in ILR 1978 MP 569.*
- (4) *Jyoti Basu and others .vs. Debi Ghoshal and others, reported in (1982) 1 SCC 691.*
- (5) *Azhar Hussain .vs. Rajiv Gandhi, reported in 1986 (Supp) SCC 315.*
- (6) *Samar Singh .vs. Kedar Nath alias K.N. Singh and others, reported in 1987 (Supp) SCC 663.*
- (7) *Kailash .vs. Nanhku and others, reported in (2005) 4 SCC 480.*

18. The respondent no.1 has heavily relied upon the case of ***G.V. Sreerama Reddy and another*** (supra) to fortify his submission that Section 81 of the said Act has been thoroughly

interpreted by the Hon'ble Supreme Court of India. It is stated that the Representation of the People Act being a special statute and is a self-contained regime, hence while interpreting such a statute, the court must consider the intention of the legislature. The reason is that the statute has been enacted with a specific purpose which must be measured from the wordings of the statute strictly construed. Since an election petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. The observations of Hon'ble Supreme Court of India in paras 14, 16, 18, 22 and 24 are reproduced as under :

14. A close look at [Section 81](#) reveals that the two remaining Sub-sections after the amendment introduced by Act 47 of 1966, i.e. (1) and (3) deal with two distinct, but interrelated issues. Sub-section (1) deals with the necessary requirements of any petition challenging an election, and Sub-section (3) deals with additional requirements as to the petition presented. Sub-section (1) has five components,

(i) the qualification of the petitioner, i.e. he/she must be either "a candidate at such election" or an "elector";

(ii) the petition must be presented 'by' the petitioner;

(iii) the petition must be based "on one or more of the grounds specified in sub-section (1) of [section 100](#) and [section 101](#);

(iv) it must be presented in the High Court; and

(v) it must be presented within 45 days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

16. While interpreting a special statute, which is a self-contained code, the Court must consider the intention of the Legislature. The reason for this

fidelity towards the Legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed.

18. *In spite of existence of adequate provisions in [the Code of Civil Procedure](#) relating to institution of a suit, the present Act contains elaborate provisions as to disputes regarding elections. It not only prescribes how election petitions are to be presented but it also mandates what are the materials to be accompanied with the election petition, details regarding parties, contents of the same, relief that may be claimed in the petition. How trials of election petitions are to be conducted has been specifically provided in Chapter III of Part VI. In such circumstances, we are of the view that the provisions have to be interpreted as mentioned by the Legislature.*

22. *Learned counsel appearing for the appellants relied on a decision of the High Court of Rajasthan (Jaipur Bench) in [Bhanwar Singh vs. Navrang Singh](#), AIR 1987 Raj 63. In the case before the learned Single Judge, the election petition had been presented by one Rajendra Prasad, Advocate and not by the petitioner himself. It was argued by learned counsel for the petitioner therein that the election petition had been validly presented under [Section 81 \(1\)](#) of the Act because [Section 81 \(1\)](#) of the Act only makes a provision as to who can file an election petition and does not deal with as to who should actually present it before the Registry. It is further submitted that [Section 81](#) of the Act nowhere provides that the petitioner should be physically present at the time of presentation of the election petition. The learned Single Judge, after adverting to the words - "by", "presented" concluded that these words used in [Section 81\(1\)](#) of the Act have to be given wide meaning and found that the election petition filed through an advocate without the presence of candidate or elector is valid. We are unable to accept the said conclusion.*

24. *The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider sub-section (1) along with the other provisions in Chapter II and III, the object and intent*

of the Legislature is that this provision i.e. Section 81(1) is to be strictly adhered to and complied with.

19. Per contra, learned counsel for petitioner, in support of his submission, states that since the petitioner was personally present on 04.01.2025 and sworn an affidavit before the Registrar (Judicial), same amounts to presentation of petition, therefore, the endorsement of the Registrar (Judicial) dated 06.01.2025 that the petition is presented by Advocate is a formal note and does not render the election petition liable for dismissal. Petitioner in support of his submission relied upon the following case laws :

- (1) *Jamal Uddin Ahmad .vs. Abu Saleh Najmuddin and another, reported in AIR 2003 SC 1917.*
- (2) *Raj Kumar Yadav .vs. Samir Kumar Mahaseth and others, reported in (2005) 3 SCC 601,*
- (3) *Sheo Sadan Singh .vs. Mohan Lal Gautam, reported in (1969) 1 SCC 408.*
- (4) *Shrikrishna Vasudeo Datye .vs. Bhalchandra Anant Sawant, reported in 1979 SCC OnLine Bom. 259 : (1980) 82 Bom LR 142.*
- (5) *Dr. Bhagirath Prasad .vs. Election Commission of India and others, reported in AIR 2011 Madhya Pradesh 93.*

20. In addition to above case laws, the petitioner has relied upon the Bombay High Court Appellate Side Rules, 1960, particularly Chapter IV Rule 1 and Chapter V. He further relied

upon the rules framed by the High Court of Judicature at Bombay in regard to Election Petition under the Representation of the People Act, 1951.

By pointing out the said rules, it is the submission of the petitioner that as per the Bombay High Court Appellate Side Rules, the petition being sworn on 04.01.2025 amounts to presentation of the suit and the Chapter V Rule 1 specifically states that such presentation of the petition amounts to institution of proceeding. He further stated that as per the said Rules, after necessary compliance under Sections 81, 82 and 117 of the 'Said Act', Registry put up the petition before the Court. As such, on the satisfaction of the Registry, there was no objection and accordingly summons were issued in the matter. Hence, in this background, the application filed by the respondent no.1 is not tenable and liable to be rejected.

On relying upon the Rules framed by this Court in regard to Election Petition, Petitioner states that authorized Advocate on behalf of Petitioner can present Election Petition. Hence, presentation of the petition on 06.01.2025 through an Advocate is justified in the matter.

21. To rebut this submission, the learned counsel for respondent no.1 states that under the provisions of the Representation of the People Act, 1951 there is a specific procedure prescribed under Section 81 (1) of the said Act. According to him, when the statutory provision unequivocally stipulates as to what is required to be done to comply with the mandate of that provision, it is not permissible in law to read something more into that provision.

22. To substantiate this submission, the respondent no.1 has relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Kailash .vs. Nanhku and others, reported in (2005) 4 SCC 480.*** The Hon'ble Supreme Court of India in paras 10 and 12 observed as under :

10. Section 169 of the Act confers power on the Central Government to make rules for carrying out the purposes of the Act. The Central Government is empowered to make rules which may govern the procedure of trial of election petitions. Although, this subject is not specifically mentioned as one of the matters in sub-section (2) which specifies the topics on which the Central Government may frame rules, however, clause (i) of sub-section (2) is a residuary clause which empowers the Central Government to frame rules regarding "any other matter required to be prescribed by this Act." Sub-section (1) of [Section 87](#) of the Act also gives an indication that the statute contemplates the framing of rules under the Act to govern the procedure of trials before the High Court, which, read with the Preamble to the Act, is the source of power for making the rules laying down the procedure for the trial of election petitions. There is no provision in the Act which empowers the High Court to frame the rules governing the procedure of trials before the High Court. However, the High Court is not entirely powerless in the matter of framing the rules of procedure. [Article 225](#) of the Constitution of India confers powers on the High Court, inter alia, to make rules of court for the purpose of hearing, trying and deciding any matter lying within the jurisdiction of the High Court. The High Court can thus frame rules of procedure regarding the trial of election petitions under [Article 225](#) of the Constitution. This source of power emanates from the Constitution and is, therefore, very potent. [Section 129](#) of CPC is another source of power of High Court to make rules to regulate its own procedure in the exercise of its original civil jurisdiction. This will include election petitions also as they are tried in the original civil jurisdiction of the High Court.

12. A perusal of the several provisions made by the High Court Rules goes to show that the Rules touch many a subject on which provisions are found in the Act itself. Suffice it to observe that in case of conflict,

the provisions of the Act and the provisions of the High Court Rules shall, as far as may be, be harmoniously construed avoiding the conflict, if any, and if the conflict be irreconcilable the provisions contained in the Act being primary legislation shall prevail over the provisions contained in the High Court Rules framed in exercise of delegated power to legislate. No such conflict is noticeable, so far as the present case is concerned.”

23. In view of this settled position of law, the submission and reliance of petitioner on Bombay High Court Appellate Side Rules and Rules framed in regard to Election Petition does not come to his rescue. Hence, submission of petitioner in this regard cannot be accepted.

24. It is further pertinent to note that initially under Section 81 (2) of the said Act, as stated above, it was permitted to present the election petition by the person or by an Advocate duly authorized in that behalf by the party concerned. Hence, in light of that provision, the rules were framed by the Bombay High Court. However, as Section 81 (2) of the Act is itself omitted by the Act 47 of 1966 with effect from 14.12.1966, the reliance of the petitioner on such provision is not tenable. Petitioner failed to point out that after omission of clause (2) of Section 81 of the said Act, the rules were framed or any provision is incorporated by Bombay High Court in its rules. As such, in light of omission of provision, the submission of petitioner is not sustainable in the eyes of law.

25. In respect of various case laws relied upon by petitioner, I have gone through the same. I found that judgment of Hon'ble Supreme Court of India in the case of ***Jamal Uddin Ahmad*** (supra) is not applicable in the matter because the gist

of the plea raised in that petition was that whether the election petition should have been presented either before the Designated Election Judge or the Chief Justice of the High Court and whether the presentation of petition before the stamp reporter is invalid under Section 81 of the Act. However, in the present matter, issue is entirely different and, therefore, the said judgment is not applicable in the matter.

26. The petitioner then relied upon the judgment of ***Raj Kumar Yadav*** (supra), wherein again the issue was regarding whether the election could be presented only to the Judge in open court on last date of limitation is a valid presentation or not. As such, the question was in dispute, whether an election petition presented at 4.25 PM on last date of limitation after the Judge had risen from the open court but was available in chambers within the court premises can be said to be a valid presentation so as to be within the period of limitation, but the issue involved is entirely different in the present matter and perusal of said judgment nowhere shows any finding recorded by the Supreme Court of India in respect of issue involved in the present matter.

27. Petitioner then relied upon the judgment in the case of ***Sheo Sadan Singh*** (supra). This judgment of Hon'ble Supreme Court of India has been considered by Hon'ble Supreme Court in subsequent judgment in the case of ***G.V. Sreerama Reddy and another*** (supra) and specifically observed in para 21 of the said judgment as under :

*“It is to be noted that in Sheo **Sadan Singh** case, it is not in dispute that the petition was presented to the Registry in the immediate presence of the petitioner.*

In other words, the officer authorised by the High Court had an opportunity to verify him but in the case on hand, admittedly, it was presented only by the advocate and the petitioners were not present before the Registrar (Judicial). In view of the same, the said decision is not helpful to the appellant's case. This is because the petitioner therein had, in substance, complied with the provision as strictly construed."

The aforesaid judgment relied by the petitioner accordingly is not helpful to him.

28. The reliance upon the judgment in the case of ***Shrikrishna Vasudeo Datye*** (supra), in my view, is not helpful in light of the judgment of Hon'ble Supreme Court in the case of ***G.V. Sreerama Reddy and another*** (supra). So also the judgment in the case of ***Dr. Bhagirath Prasad*** (supra) delivered by Gwalior Bench by the Single Bench also not helpful to the petitioner because the facts of the said case are altogether different and same cannot override the judgment of Hon'ble Supreme Court of India.

29. It is stated that it has been repeatedly observed by Hon'ble Supreme Court of India that an election petition is not an action at law or a suit in equity but is purely statutory proceeding unknown to common law and that court possess no common law power. The general rule is well settled that a statutory requirement of election law must be strictly observed. If the statute rendered any particular requirement mandatory, the courts possessed and could exercise no dispensing power to waive non-compliance. The court has no implied power to cut down or enlarge the scope of the express provision of the statute by invoking the provisions of the code. The trial of the

election petition is strictly governed by statute. Under Article 329 of the Constitution of India, it is made clear that “no election shall be called in question, except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature and where the manner of the presentation is prescribe in the Election Law, its scope cannot be extended or enlarged by importing into the provisions something from the general law.

Accordingly, in view of Section 81 of the said Act, by express provision, presentation of election petition shall be by a candidate, the meaning is therefore implicit that the presentation has to be made by the candidate in person. Hence, I am of the considered opinion that the mandate of Section 81(1) of the said Act would prevail over the rules and regulations.

30. In the present petition, the petitioner has heavily relied upon the fact that on 04.01.2025 he has sworn the affidavit and, therefore, same amounts to presentation of appeal. In this regard, it is stated that verifying and swearing of an affidavit is one thing and presentation of the petition before the court is another thing. Under the provisions of Code of Civil Procedure, the mode of representation implies delivery of the documents to the court or to its officer. Presentation by the party-in-person or by his recognized agent or by his pleader. But considering the express provision as contained in Section 81, presentation of Election Petition by a candidate is mandatory. There is no scope to present the petition by any other person. Earlier there was a provision to present the petition through the agent or through the authorized agent, but said provision has

been omitted with effect from 14.12.1966, as stated above. Hence, the meaning is implicit by bare perusal of Section 81 that the presentation has to be made by a candidate in person.

31. It is further stated that swearing an affidavit before the Registrar (Judicial) under Section 139 of the Code of Civil Procedure is also misplaced because merely swearing of an affidavit before the Registrar (Judicial) bears no significance. The same cannot be equated with the presentation of the petition. This observation is further supported by Section 83 of the said Act. The said provision titled as contents of petition under clause (c) state that the contents of petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleading. As such, the scope of affidavit is only for the verification of the pleading. The scope of swearing of an affidavit cannot be extended to say that the same amounts to presentation of petition. The presentation of the petition is after completing all the necessary exercise, as required under Chapter-II of Representation of the People Act. Hence, considering the specific provisions of the Representation of the People Act, I am of the confirmed opinion that swearing of an affidavit does not amount to presentation of petition before the High Court and, therefore, according to me, there is non-compliance of Section 81 (1) of the Act and consequently Section 86 of the said Act, same deserves to be dismissed.

32. In the backdrop of above said position of law, it will be relevant to consider the recent judgment delivered by coordinate bench in the case of **Narendra Lalchandji Mehta** (supra). In the said judgment, the law laid down by the Hon'ble

Supreme Court of India in the case of ***G.V. Sreerama Reddy and another*** (supra) was elaborately considered and specifically observed in paras 12, 13 and 14 as under :

12. After taking into consideration the above noted submissions advanced by the learned Counsel appearing for respective parties and after perusing the record, two vital facts appear from record namely, (i) the Election Petition was presented on 2.12.2014, by Advocate Shri Durgesh Kulkarni for the petitioner and the petitioner himself was not present at the time of its presentation and (ii) the alleged true copy served upon the applicant by the original-petitioner was not attested by the petitioner under his own signature to be a true copy of the petition.

The note put by the Master and Assistant Prothonotary (Judicial) an Officer duly designated by the High Court Administration and who has accepted the Election Petition for its lodgment on 2.12.2014 mentions as under:

"The Ld. Advocate Mr. Durgesh Kulkarni i/b Lex Firmus present. He presents one original and twenty four white true copies of the petition.

S.O. Centralised Filing/Board Department to accept the Petition for lodging. C.S. Department to accept a sum of ₹ 2000/- towards process fee after the petition is lodged.

The Ld. Advocate for the Petitioner undertakes to remove the office objections during the Course of the day."

As far as the presentation of the petition by the petitioner, as contemplated under [Section 81\(1\)](#) of the Representation of the People Act, 1950 (for short "Act") is concerned, the opponent to in para-4 of his affidavit-in-reply to the amended ground No.6 (a)(1) has categorically admitted the fact that, the Election Petition was presented by his Advocate acting in furtherance on his instructions.

13. This Court has personally verified the alleged true copy served upon the applicant herein by the original petitioner after filing the present petition and it was found and noted that, the said copy is signed by the Advocate for the petitioner only as 'True Copy' and not by the petitioner himself under its own signature to be a true copy of the petition.

14. Thus it is clear from the record that, the opponent (original-petitioner) has presented the present petition in utter violation of Section 81(1) and (3) of the [Representation of the People Act, 1950](#) and therefore the present application preferred by the present applicant (original-respondent No.1) needs to be allowed and the Election Petition filed by the opponent (original Petitioner) needs to be rejected under [Order VII Rule 11 of the Code of Civil Procedure](#) r/w [Section 86 of the Representation of the People Act, 1950](#).”

33. As stated above, in the present case, it is an admitted fact that an affidavit was sworn on 04.01.2025 and presented on 06.01.2025, I have perused the entire record, so also the B-File of the petition. It is revealed from the entire record that though affidavit was sworn on 04.01.2025, the petition was presented on 06.01.2025. Hence, considering the date of presentation as 06.01.2025, the days of limitation were counted by the Registrar (Judicial) of this office. Furthermore, there is a specific endorsement of the Registrar (Judicial) that the petition was presented before him on 06.01.2025. In view of above said admitted facts in the matter, I find no reason to take another view than what the law laid down by the Hon'ble Supreme Court of India in the case of ***G.V. Sreerama Reddy*** (supra) and followed by this court in the case of ***Narendra Lalchandji Mehta*** (supra). Accordingly, I proceed to pass the following order :

ORDER

(i) Civil Application (CAO) No.496/2025 in Election Petition No.21/2025 filed by respondent no.1 is allowed.

(ii) Election Petition No.21/2025 filed by the petitioner is hereby rejected in view of Section 86 (1) of the

Representation of the People Act, 1951 for non-compliance of Section 81 (1) of the said Act.

34. There shall be no order as to costs.

(PRAVIN S. PATIL, J.)

Gulande